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SUBJECT: 2009 INVESTMENT CLIMATE STATEMENT - HAITI

REF: 08 STATE 123907

Openness to Foreign Investment

¶1. (U) Haiti's openness to foreign investment is codified in its laws. Import and export policies are non-discriminatory and are not based upon nationality. There is no significant public opposition to foreign investment in Haiti. The Government of Haiti (GoH) has made notable progress in recent years to improve the legal framework, create and strengthen core public institutions and enhance economic governance. The constitutional government of President Rene Preval continued the monetary, fiscal, and foreign exchange policies initiated under the 2004-2006 interim government with the assistance of the International Monetary Fund (IMF) and the World Bank. Such policies include reducing interest rates to facilitate access to credit. Continued political instability and weak institutional capacity within the GoH and in the private sector have reduced the impact of the government's initiatives and hampered its ability to modernize its commercial, investment, tax, and banking laws. Moreover, the global economic downturn, the food crisis which led to violent riots in April, and a deadly hurricane season deeply impacted investment incentives in Haiti during 2008.

¶2. (U) In November 2002, the Haitian Parliament passed an investment code prohibiting fiscal and legal discrimination against foreign investors. The 2002 code explicitly recognizes the crucial role of foreign direct investment in spurring economic growth and aims to facilitate, liberalize, and stimulate private investment. The code contains exemption regimes to promote investment likely to enhance competitiveness in sectors deemed priorities or strategically important, especially export-oriented sectors. Tax incentives, such as reductions on taxable income and tax exemptions, are designed to promote private investment. The investment code grants Haitian and foreign investors the same rights. Foreign investors must be legally registered and pay appropriate taxes and fees.

¶3. (U) An additional requirement of the 2002 investment code is the establishment of an Inter-ministerial Investment Commission (CII) to examine investor eligibility for license exemptions as well as customs and tariff advantages. The CII is composed of representatives of the Ministries of Economy and Finance, Commerce, and Tourism, as well as those ministries with purview over the prospective area of investment. The CII must authorize all business sales, transfers, mergers, and partnerships within the scope of the code. The CII also manages the process of fining and sanctioning enterprises that ignore the code.

¶4. (U) The majority of economic activities are open to both Haitian and foreign private investors. Investment in certain sectors, however, requires special government authorization. Investment in "sensitive" sectors, such as electricity, water and telecommunications, requires a government concession. Investment in the public health sector requires authorization from the Ministry of Public Health and Population. Investment in agriculture is subject to the Ministry of Agriculture's approval. In general, natural

resources are considered to be the property of the state. As a result, prospecting, exploring, or exploiting mineral and energy resources require concessions and permits from the Bureau of Mining and Energy, Ministry of Public Works. Mining, prospecting, and operating permits may only be granted to firms and companies established and resident in Haiti.

¶5. (U) Haiti has made several commitments to the World Trade Organization (WTO) in relation to the financial services sector. These commitments include permitting foreign investment in financial services, such as retail, commercial and investment banking, and consulting. Currently, there are two foreign banks operating in Haiti, Citibank of the United States and Scotia Bank of Canada.

¶6. (U) An initiative designed to attract investment was the establishment in July 2007 of the Investment Facilitation Center (CFI), a one-stop investment facilitation center to promote investment opportunities. The CFI's major activities include: streamlining the investment process by simplifying the procedures related to trade and investment; providing updated economic and commercial information to local and foreign investors; and promoting investment in priority sectors. The GoH considers strategic investments in sectors that contribute substantially to reductions in the balance of payments deficit, increase economic growth, and improve the skill level of the labor force as priorities. Investments that lead to permanent job creation and a renewal of the domestic production structure are also considered priority or strategic investments.

¶7. (U) In October 1996, the GoH established legislation on the privatization of public enterprises, which allows foreign firms to invest in the management and/or ownership of Haitian state-owned enterprises. The government established the Commission for the Modernization of Public Enterprises (CMEP) in 1996 to facilitate the privatization process by creating strategies to privatize Haitian state enterprises. Despite initial enthusiasm in both the public and private sectors for privatization, progress has been slow. To date, only two Haitian state-owned enterprises have been privatized. In 1998, two U.S. companies, Seaboard and Continental Grain, purchased 70 percent of the state-owned flour mill. Currently, each partner owns 23 percent of the new company known today as "Les Moulins d'Haiti".

¶8. (U) In 1999, a consortium of Colombian, Swiss, and Haitian investors purchased a majority stake in the national cement factory. Since then privatization has stalled. The government has expressed renewed interest in privatizing the state telecommunications company (TELECO), the Port-au-Prince airport, and selected seaports. The GoH has allowed private sector investment in electricity generation to compensate for the state electricity company's (Electricite d'Haiti - EDH) inability to supply sufficient power. In 2006, the GoH conducted financial audits of the National Port Authority (APN), TELECO and EDH in order to pave the way for privatization. In June 2008, TELECO took its first step toward privatization, consisting of an evaluation process conducted with the financial support of the International Finance Corporation.

¶9. (U) Despite recent progress and the GoH's commitment to improve investment, Haiti's investment climate improved only incrementally during 2008. The fiscal year was characterized by political instability; food price rises followed by violent riots which caused serious damage in the private sector; and a deadly storm season that deeply impacted economic activities. Despite improvements in the telecommunications sector, Haiti did not become more competitive compared to the rest of the region. Overall costs to start a new business in Haiti remained high, while access to credit as well as structures for investor protection are still insufficient.

¶10. (U) Haitian law is deficient in a number of areas, including: operation of the judicial system; organization and operation of the executive branch; publication of laws, regulations, and official notices; establishment of companies; land tenure and real property law and procedures; bank and credit operations; insurance and pension regulation; accounting standards; civil status documentation; customs law and administration; international trade and investment promotion; foreign investment regime; and regulation of market concentration and competition. Although these deficiencies hinder business activities, they are not specifically

aimed at foreign firms and appear to have an equally negative effect on foreign and local companies.

Conversion and Transfer Policies

¶11. (U) There are no restrictions or controls on foreign payments or other fund transfer transactions and foreign exchange is readily available. All citizens or legal residents have the right to dispose of their assets.
The GoH does not impose restrictions on the inflow or outflow of capital. Banks and currency exchange companies set their rates at the market-clearing rate. The spread between buying and selling rates is generally less than five percent.

¶12. (U) The Haitian Central Bank (BRH) publishes a daily reference rate, which is a weighted average of exchange rates offered in the formal and informal exchange markets. The exchange rate for the Haitian Gourde (HTG) is determined by the market and based on a floating exchange rate mechanism. During FY 08, the average exchange rate was 38.27 HTG/USD. The current exchange rate is approximately 40.5 HTG/USD. The upward trend of the exchange rate during FY 08 was driven by the erosion of the internal value of the Haitian gourde and a deteriorating balance of payments due to rising fuel and food costs which increased import levels. This increase led to depreciation expectations, thus generating higher demand for dollars. Meanwhile, remittances, which usually boost overall foreign currency supply, decreased by over ten percent in 2008, despite increasing aid flows.

Expropriation and Compensation

¶13. (U) The 1987 Constitution allows expropriation or dispossession only for reasons of public interest or land reform and is subject to prior payment of fair compensation as determined by an expert. If the initial project for which the expropriation occurred is abandoned, the Constitution stipulates that the expropriation will be annulled and the property returned to the original owner. The Constitution prohibits nationalization and confiscation of real and personal property for political purposes or reasons.

¶14. (U) Title deeds are vague and insecure. The GoH has an office (INARA) to implement expropriations of private agricultural properties with appropriate compensation. The agrarian reform project initiated under the first Preval administration was controversial among both Haitian and U.S. property owners. There have been complaints of non-compensation for the expropriation of property. The lack of access to land records, surveys, and property titles in Haiti complicates most cases.

Dispute Settlement

¶15. (U) Haiti's commercial code dates to 1826 and underwent a significant revision in 1944. There are few commercial legal remedies available. The protection and guarantees that Haitian law extends to investors are severely compromised by weak enforcement mechanisms, a lack of updated laws to handle modern commercial practices, and a weak judicial system. Injunctive relief is based upon penal sanctions rather than securing desirable civil action. Similarly, contracts to comply with certain obligations, such as commodities futures contracts, are not enforced. Judges do not have specializations, and their knowledge of commercial law is limited. Utilizing Haitian courts to settle disputes is a lengthy process and cases can remain unresolved for many years. Bonds to release assets frozen through litigation are unavailable. Business litigants are often frustrated with the legal process and pursue out-of-court settlements.

¶16. (U) In October 2007, the Haitian Chamber of Commerce and Industry (CCIH), in partnership with the GoH and funding from the European Union, established a commercial dispute settlement mechanism -- the Arbitration and Conciliation Chamber -- to provide mechanisms for conciliation and arbitration in cases of private

commercial disputes.

¶17. (U) There are several ongoing private disputes between U.S. and Haitian entities. Americans seeking resolution of these disputes are often hindered by Haiti's inefficient legal system. There are persistent allegations that some Haitian officials use their public office position to influence commercial dispute outcomes for personal gain. As a result of international assistance, progress is being made to increase the credibility of the judiciary and the effectiveness of the national police.

¶18. (U) Disputes between foreign investors and the state can be settled in Haitian courts or through international arbitration, though claimants must select one to the exclusion of the other. A claimant dissatisfied with the ruling of the court cannot request international arbitration after the ruling is issued. Foreign court decisions are not enforceable in Haiti. Haiti is a signatory to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards, which provides for the enforcement of an agreement to arbitrate present and future commercial disputes. Under the convention, courts of a contracting state can enforce such an agreement by referring the parties to arbitration. Haiti is not a signatory to the Inter-American-U.S. convention on International Commercial Arbitration of 1975 (Panama Convention).

¶19. (U) Haiti signed, but has not yet ratified, the 1966 Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID). The GoH appears to recognize that the protections and guarantees that Haitian laws extend to investors are severely compromised by weak enforcement mechanisms and a lack of updated laws to handle modern commercial disputes.

¶20. (U) Haiti's bankruptcy law was enacted in 1826 and modified in ¶1944. There are three phases of bankruptcy under Haitian law. In the first stage, payments cease and bankruptcy is declared. In the second stage, a judgment of bankruptcy is rendered, which transfers the rights to administer assets from the debtor to the Director of the Haitian Taxation Office (DGI). In this phase, assets are sealed and the debtor is confined to debtor's prison. In the last stage, the debtor's assets are liquefied and the debtor's verified debts are paid. In practice, the above measures are seldom applied. Since 1955, most bankruptcy cases have been settled through courts. Debts are normally paid in Haitian Gourdes.

¶21. (U) Although the concepts of real property mortgages and chattel mortgages -- pledging of personal property, such as machinery, furniture, automobiles, or livestock to secure a mortgage

-- exist, real estate mortgages involve antiquated procedures and may fail to be recorded against the debtor or other creditors. Property is seldom purchased through a mortgage and secured debt is difficult to arrange or collect. Liens are virtually impossible to impose, and using the judicial process for foreclosure is time consuming and futile. Banks frequently require that loans be secured in U.S. dollars.

Performance Requirements and Incentives

¶22. (U) Haitian law confers equal treatment to manufacturing companies that produce for the local market regardless of their nationality, as long as they reside in Haiti. There are several special status categories for certain types of investment in priority or strategically significant enterprises.

¶23. (U) In order to attract investment to certain industries, the 2002 Investment Code created a privileged status for certain manufacturers. Eligible firms can benefit from customs, tax, and other advantages under this code. Investments that provide added value of at least 35 percent in the processing of local or imported raw materials are eligible for preferential status.

¶24. (U) The statute allows for a 5- to 10-year income tax exemption. Industrial or crafts-related enterprises must meet one of the following criteria in order to benefit from this exemption:

-- Make intensive and efficient use of available local resources

(i.e., advanced processing of existing goods, recycling of recoverable materials).

-- Increase national income.

-- Create new jobs and/or upgrade the level of professional qualifications.

-- Reinforce the balance of payments position and/or reduce the level of dependency of the national economy on imports.

-- Introduce or extend new technology more appropriate to local conditions (i.e., utilize non-conventional sources of energy, use labor intensive production).

-- Create and/or intensify backward or forward linkages in the industrial sector.

-- Export-oriented production.

-- Substitute a new product for an imported product, provided that the new product presents a quality/price ratio deemed acceptable by the appropriate entity and comprises a total production cost of at least 60 percent of the value added in Haiti, including the cost of local inputs used in its production.

-- Prepare, modify, assemble, or process imported raw materials or components for finished goods that will be re-exported.

-- Utilize local inputs at a rate equal or superior to 35 percent of the production cost.

¶25. (U) For investment that matches one or more of the criteria described above, the GoH provides customs duty and tax incentives. Companies that enjoy tax exemption status are required to submit annual financial statements. Fines or withdrawal of tax advantages may be assessed to firms failing to meet the Investment Code's provisions.

¶26. (U) A progressive tax system applies to income, profits, and capital gains earned by individuals. The tax rates on individuals are as follows (40.5 HTG/USD):

Income (Gourdes)	Rate (percent)
Up to 60,000	0
60,001 to 240,000	10
240,001 to 480,000	15
480,001 to 1,000,000	25
Over 1,000,000	30

The tax rate on corporate income is 30 percent.

¶27. (U) The GoH does not impose discriminatory requirements on foreigners who wish to invest. Haitian laws, related to residency status and employment, are reciprocal. Foreigners who are legal residents in Haiti and wish to engage in trade have, within the framework of laws and regulations, the same rights granted to Haitian citizens. However, Article 5 of the Decree on the Profession of Merchants reserves the function of manufacturer's agent for Haitian nationals.

¶28. (U) A foreigner who wishes to obtain residential status to conduct business in Haiti must deposit HTG 50,000 (USD 1250) in a blocked account at the BRH. A professional identity card, issued by the Ministry of Commerce and Industry, is also required. Transient business persons and those temporarily in the country must be accompanied by locally licensed agents when visiting clients or soliciting business.

¶29. (U) Foreigners working in Haiti are subject to property restrictions. Foreigners, excluding foreign corporations, may not own more than one residence in the same district or own real estate without prior authorization from the Ministry of Justice. Land ownership is limited to 1.29 hectares (about 3 acres) in urban areas and 6.45 hectares (about 16 acres) in rural areas. Additionally, foreigners may not own property or buildings near the border.

Foreigners who establish Haitian corporations with corporate offices located in Haiti are not affected by restrictions on ownership of property or buildings adjacent to the Dominican Republic border.

Right to Private Ownership and Establishment

¶30. (U) Investors in Haiti can create the following types of businesses: sole proprietorship, limited or general partnership, joint-stock company, public company (corporation), subsidiary of a foreign company, and co-operative society. Corporations are the most commonly used form of business in Haiti.

¶31. (U) Foreign investors are permitted to own 100 percent of a company or subsidiary. As a Haitian entity, such companies enjoy all rights and privileges provided under the law. Additionally, they are permitted to operate businesses without equity-to-debt ratio requirements. Accounting law allows foreigners to capitalize using tangible and intangible assets in lieu of cash capital investments.

¶32. (U) Foreigners are free to enter into joint ventures with Haitian citizens. The distribution of shares is a private matter between two partners. However, the sale and purchase of company shares are regulated by the state.

¶33. (U) Entrepreneurs are free to dispose of their properties and assets and to organize production and marketing activities in accordance with local laws.

Protection of Property Rights

¶34. (U) Haitian law protects copyrights, patent rights, and inventions, as well as industrial designs and models, special manufacturers' marks, trademarks, and business names. The law penalizes individuals or enterprises involved in infringement, fraud, or unfair competition. Haiti is a signatory to the Buenos Aires Convention of 1910, the Paris Convention of 1883 regarding patents, and the Madrid Agreement regarding trademarks. Haiti has ratified the Bern Copyright Convention.

¶35. (U) The current draft trademark law appears to reflect the GoH's determination to revise its intellectual property legislation in line with its international agreements. As noted, weak enforcement mechanisms, inefficient courts, and judges' inadequate knowledge of commercial law may significantly impede the effectiveness of statutory protections.

¶36. (U) Real property interests are handicapped by the absence of a comprehensive civil registry. Bonafide property titles are often non-existent. If they do exist, they are often in conflict with other titles for the same property. The Embassy periodically receives reports of fraudulent or fraudulently recorded land titles. Mortgages exist, but real estate mortgages are expensive and involve cumbersome procedures. They are not always recorded against the debtor or creditors.

Transparency of the Regulatory System

¶37. (U) Haitian laws are transparent and theoretically universally applicable, but legal enforcement is not universally applied nor observed. The bureaucracy and "red tape" in the Haitian legal system is often excessive.

¶38. (U) Haiti does not have laws to specifically foster competition. The GoH established an Investment Facilitation Center (CFI) in 2007. Since its implementation, the CFI has significantly reduced delays facing investors in starting a business in Haiti, thereby reducing transaction costs. As a result of CFI efforts, cumbersome entry procedures were reduced from 12 procedural steps to ¶5. This may foster competition by facilitating the entry of additional investors.

¶39. (U) Tax, labor and health, and safety laws and policies are also theoretically universally applicable. However, they are not universally applied, observed, or enforced. Many in the private sector provide services, such as health care, for employees that are not provided by government agencies.

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Efficient Capital Markets and Portfolio Investment
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¶40. (U) The scale of financial services remains modest in Haiti. In principle, there are no limitations on foreigners' access to the Haitian credit market and credit is available through commercial banks. The free and efficient flow of capital is hindered by the difficulties in obtaining financing and by Haitian accounting practices, which often fall below international standards. While there are no restrictions on foreign investment through mergers or acquisitions, there is no Haitian stock market, so there is no way for investors to purchase shares in a company outside of direct transactions. Discussions are underway to establish a Haitian stock market.

¶41. (U) The standards that govern the Haitian legal, regulatory, and accounting systems often fall below international norms. Haitian laws do not require external audits of domestic companies. Local firms calculate taxes, obtain credit or insurance, prepare for regulatory review, and assess real profit and loss. Accountants use basic accounting standards set by the Organization of Certified Professional Accountants in Haiti (OCPAH).

¶42. (U) Practices in the banking sector, however, are superior to other sectors. Under Haitian law, banks are not required to comply with internationally recognized accounting standards nor to be audited by internationally recognized accounting firms. Haiti's Central Bank, BRH requires only that banks be audited. Nonetheless, most private banks follow international accounting norms and use consolidated reporting.

¶43. (U) The trend in the banking sector has been the proliferation of branches to capture deposits and remittances and the concentration of credit mainly in trade financing. Three major banking institutions hold 80 percent of total banking sector assets, valued at HTG 95.8 billion (over USD 2.35 billion) in 2008 -- 37 percent of GDP. The three major commercial banks hold also 70 percent of total loan portfolios, while 80 percent of total loans are monopolized by 10 percent of borrowers, which increases Haitian banking system's vulnerability to systemic credit risk. In 2008, the quality of the loan portfolios in the banking system has slightly improved, with non-performing loans accounting for 9.7 percent of total loans, down from 10 percent in 2007. However, equities were more exposed with non-performing loans accounting for nearly 16 percent of total equities, up from 6.4 percent in 2007.

¶44. (U) In 2008, the BRH's main challenge was to maintain monetary stability while public authorities urged it to implement inflationary measures in response to the food/fuel crisis and hurricane devastation. In order to stimulate credit to private sector, the BRH lowered its benchmark interest rates from 17.8 percent in early 2007 to 8 percent in 2008. The refinancing interest rates decreased from 27 percent to 19 percent.

¶45. (U) There are no legal limitations on foreigners' access to the domestic credit market. Credit is available on market terms through commercial banks. However, banks demand a pledge of real property to grant loans. Given the lack of effective cadastral and civil registries, loan applicants face daunting challenges in obtaining credit. The banking sector is very conservative in its lending practices. Banks typically lend exclusively to their most trusted and credit-worthy clients. In addition, the high concentration of assets does not allow for product innovation at major banks.

¶46. (U) In order to give greater financial services access to individuals and prospective investors, the GoH drafted a mortgage and chattel law to adopt a system of tangible movable property (ex. portable machinery, furniture, tangible personal property) as collateral for loans. These laws are currently before the Haitian Parliament and would allow individuals to buy condominiums and banks to accept personal properties, such as cars, bank accounts, etc., as

a pledge for loans. USAID/Haiti has a portfolio guarantee program with major banks in order to encourage them to expand credit to productive small and medium enterprises and rural micro-enterprises. The GoH is planning to establish a credit rating bureau to disseminate data on the total indebtedness and concentration of credit risks of businesses and individuals in the financial sector. The banking system is sound, although net profit declined last year.

Political Violence

¶47. (U) Over the last two years Haiti's political situation has improved, but still remains fragile. Riots over the high price of food erupted in April 2008, which resulted in the fall of the government, but which did not target foreign business. There have been no recent cases of political groups targeting foreign projects and/or installations. Historically, politically motivated civil disorder, such as periodic demonstrations and labor strikes, occasionally interrupted normal business operations. Land invasions by squatters are a problem in both urban and rural areas, and requests for help to law enforcement authorities often go unanswered.

Corruption

¶48. (U) Corruption is an ongoing challenge to economic growth. Transparency International's Corruption Perception Index for 2008 ranked Haiti the fourth most corrupt country in the world. The GoH has made incremental progress in enforcing public accountability and transparency, but substantive institutional reforms are still needed. In 2004, the government established the Specialized Unit to Combat Corruption (ULCC) in the Ministry of Economy and Finance. In February 2008, the law on disclosure of assets by civil servants and high public officials prepared by ULCC was voted by the Parliament. The ULCC is in the process of drafting a national strategy to combat corruption and is preparing a code of ethics for the civil service. ULCC will send a specific anti-corruption bill to Parliament for consideration in the coming months.

¶49. (U) In 2005, the GoH created the National Commission for Public Procurement (CNMP) to ensure that government contracts are awarded through competitive bidding and to establish effective procurement controls in public administration. The CNMP publishes lists of awarded government contracts. Substantial public procurement contracts, notably contracts involving the state-owned electricity company EDH, routinely bypass the CNMP, leaving open the possibility of graft.

¶50. (U) The GoH in 2007 began a high-profile campaign to eliminate corruption in the public and private sector. This effort has led to high profile arrests in the business community. Former board members of SocaBank were imprisoned for embezzling the bank's assets in 2004. The bank's former director and several of his assistants remain in detention but have not been tried. Two prominent businessmen were subsequently imprisoned on suspicion of customs fraud, but have since been released and the case against them dropped. The assistant director of Customs as well as several customs employees implicated in that case remain in prison.

¶51. (U) President Rene Preval has openly affirmed his commitment to fight corruption. He is actively seeking technical assistance and cooperation with countries in the region to reinforce Haiti's institutional capacity to fight corruption and financial crime.

¶52. (U) U.S. firms have complained that corruption is a major obstacle to effective business operation in Haiti. They point to requests for payment by customs officials in order to clear import shipments as examples of solicitation for bribes. Some importers reportedly "negotiate" customs duties with inspectors.

¶53. (U) Haitian law, applicable to individuals and financial institutions, criminalizes corruption and money laundering. Bribes or attempted bribes toward a public employee are a criminal act and are punishable by the criminal code (Article 173) for one to three

years of imprisonment. The law also contains provisions for the forfeiture and seizure of assets

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Bilateral Investment Agreements

¶54. (U) In May 2008, U.S. Congress passed HOPE II, which extends the trade preference of HOPE I for ten years effective October 2008. This U.S. trade preference legislation is projected to boost Haitian private textile investment as well as foreign investment in the Haitian textile industry sector. To date, HOPE has helped generate approximately 5,000 jobs. The law is intended to create new jobs and boost the economy.

¶55. (U) Haiti signed mutual investment protection treaties or conventions with the U.S. (1953, 1983), France (1973, 1984), Germany (1975), and Canada (1980). The U.S. Senate has not ratified the treaty signed by the U.S. and Haiti in 1983. Haiti intends to deepen its regional integration efforts with its neighbors by participating in agreements and treaties with countries in the region. Haiti, a CARIFORUM member, signed an economic partnership agreement (EPA) with the European Union in December 2007. The EPA would allow the export of products from Haiti to European Union countries without tariffs or quotas. Haiti is a member of the Caribbean Community (CARICOM), which created the CARICOM Single Market and Economy (CSME) in 1989. CSME, which aims to advance the region's integration into the global economy by facilitating free trade in goods and services and the free movement of labor and capital, became operational in January 2006 among twelve of the fifteen Member States. Haiti -- a member of CARICOM, but not yet a participant in CSME -- has expressed an interest in participating fully in CSME.

OPIC and Other Investment Insurance Programs

¶56. (U) Overseas Private Investment Corporation (OPIC) offers insurance against political risks and financing programs for U.S. investments in Haiti. OPIC financing includes two programs: direct lending and investment guarantees. Direct loans are available to investment projects sponsored by or significantly involving U.S. small businesses. Investment guarantees are available to U.S. eligible investors of any size.

¶57. (U) In 1996, OPIC established an on-lending facility with Citibank-Haiti through which the bank loaned to locally investing businesses. Borrowers do not need to be U.S. investors. In fact, most of the borrowers have been Haitian. At least USD 3 million remain available under the OPIC/Citibank facility in Haiti. An additional amount of up to USD 15 million may be restorable if OPIC and Citibank amend the facility agreement. In addition, OPIC recently established a new on-lending facility with Citibank available to several Caribbean countries, including Haiti.

¶58. (U) OPIC participation in this new facility is through loan guarantees totaling USD 100 million, with up to 20 percent of this amount available for Haiti. For the previous on-lending facility, OPIC and Citibank have a 75-25 risk-sharing arrangement. The OPIC risk share for the most recent facility ranges from 25 to 75 percent for each loan, but is expected to be higher in Haiti relative to other Caribbean countries eligible under the facility.

¶59. (U) The GoH has ratified and completed its accession to the World Bank's Multilateral Investment Guarantee Agency (MIGA) that can now operate in Haiti.

Labor

¶60. (U) Haiti has an abundance of unskilled labor. Measures are currently underway to enhance the technical skills of the Haitian workforce and thereby facilitate the transfer of technology. A plan to reform vocational and technical training is underway with the cooperation of the Inter-American Development Bank (IDB) and other international multilateral agencies.

¶61. (U) Labor unions are generally receptive to investment that creates new jobs. In June 2001, the Ministry of Labor and Social Affairs submitted a draft of a revised labor code to the Prime Minister, but the new code has not yet been ratified.

¶62. (U) Labor-management relations in Haiti have at times been strained. In some cases, however, industries have autonomously implemented good labor practices. For example, the assembly industry established its own voluntary code of ethics to encourage its members to adopt good labor practices. In addition to local entities, the International Labor Organization (ILO) has an office in Haiti and operates an on-going project with the assembly industry to improve productivity through improvement in working conditions.

Foreign-Trade Zones/Free Ports

¶63. (U) A law on Free Trade Zones (FTZ) entered into force on July ¶2002. It sets out the conditions for operating and managing economic free trade zones, together with exemption and incentive regimes granted for investment in such zones. The law is not specific to a particular activity. The law defines FTZs as geographical areas to which a special regime on customs duties and controls, taxation, immigration, capital investment, and foreign trade applies and where domestic and foreign investors can provide services, import, store, produce, export, and re-export goods.

¶64. (U) Free Trade Zones may be private or joint-venture. The law provides the following incentives and benefits for enterprises located in FTZs:

-- Full exemption from income tax for a maximum period of 15 years, followed by a period during which there is partial exemption that gradually decreases;

-- Customs and fiscal exemptions for the import of capital goods and equipment needed to develop the area, with the exception of tourism vehicles;

-- Exemption from all communal taxes (with the exception of fixed occupancy tax) for a period not exceeding 15 years; and

-- Registration and transfer of the balance due for all deeds relating to purchase, mortgages, and collateral.

A Free Trade Zone has been established in the northeastern city of Ouanaminthe, where American companies -- Sarah Lee, Nautica, Dockers, Fruit of a Loom and Levi Strauss -- are currently operating.

Foreign Direct Investment Statistics

¶65. (U) OAS trade sanctions in 1991 and a comprehensive UN trade embargo in 1994 led to significant divestment of foreign holdings. Since the lifting of international sanctions in October 1994, new foreign direct investment (FDI) has been limited. In general, FDI remains low. A large increase in FDI in 2006 occurred due to Digicel investments in the telecommunications sector. FDI inflows were very limited in 2008, partly because of natural disasters and global economic downturn. As of June 2008, total FY 08 FDI inflows amounted to USD 19.3 million, down from 75 million in FY 07. (Note: much of the high FDI level for FY 07 was due to the arrival of cellular company Digicel in Haiti. End note.)

¶66. (U) Statistics on direct foreign investment by country of origin and sector are not available. Detailed and reliable statistics on total investment are also difficult to retrieve.

Major Foreign Investors

U.S. Companies:

- American Airlines

- Citibank
- Compagnie de Tabac Comme Il Faut (Luckett Inc.)
- Texaco (Chevron)
- Seaboard Marine
- Continental Grain
- Trilogy Inc.
- Spirit Airlines
- Newmont Mining

Other countries:

- Elf Acquitaine (France)
- Scotia Bank (Canada)
- Royal Caribbean (UK/Norway)
- Digicel (Ireland)
- Eurasian Minerals Inc. (Canada)
- The Sol Group (Puerto Rico)

¶67. (U) Resident U.S. citizens own light manufacturing assembly sector plants in Haiti. Other manufacturing plants operate as subsidiaries of U.S. manufacturing companies. The government does not consider these firms as major investors since they generally occupy leased facilities, and capital investment is often limited to sewing machines and office equipment. Some smaller agribusiness enterprises and hotels, partly owned by U.S. citizens, also operate in Haoti.

SANDERSON